

NOTICE: Summary decisions issued by the Appeals Court pursuant to its rule 1:28, as amended by 73 Mass. App. Ct. 1001 (2009), are primarily directed to the parties and, therefore, may not fully address the facts of the case or the panel's decisional rationale. Moreover, such decisions are not circulated to the entire court and, therefore, represent only the views of the panel that decided the case. A summary decision pursuant to rule 1:28 issued after February 25, 2008, may be cited for its persuasive value but, because of the limitations noted above, not as binding precedent. See Chace v. Curran, 71 Mass. App. Ct. 258, 260 n.4 (2008).

COMMONWEALTH OF MASSACHUSETTS

APPEALS COURT

18-P-277

COMMONWEALTH

vs.

STEPHEN J. MERISMA.

MEMORANDUM AND ORDER PURSUANT TO RULE 1:28

The defendant, Stephen J. Merisma, appeals from his conviction of resisting arrest, pursuant to G. L. c. 268, § 32B. The defendant principally contends that the judge erred in denying his motions for a required finding of not guilty because the evidence was not sufficient to prove beyond a reasonable doubt that he resisted his arrest. We affirm.

Discussion. A defendant resists arrest if "he knowingly prevents or attempts to prevent a police officer, acting under color of his official authority, from effecting an arrest of the actor or another, by: (1) using or threatening to use physical force or violence against the police officer or another; or (2) using any other means which creates a substantial risk of causing bodily injury to such police officer or another." G. L. c. 268, § 32B (a). See Commonwealth v. Tavernier, 76 Mass. App.

Ct. 351, 356 (2010); Commonwealth v. Grant, 71 Mass. App. Ct. 205, 208 (2008). "[T]he crime [of resisting arrest] is committed, if at all, at the time of the 'effecting' of an arrest." Commonwealth v. Grandison, 433 Mass. 135, 145 (2001), quoting G. L. c. 268, § 32B. Effecting an arrest occurs when there is (1) "an actual or constructive seizure or detention of the person, [2] performed with the intention to effect an arrest and [3] so understood by the person detained." Commonwealth v. Cook, 419 Mass. 192, 198 (1994), quoting Massachusetts Gen. Hosp. v. Revere, 385 Mass. 772, 778 (1982), rev'd on other grounds, 463 U.S. 239 (1983). We apply an objective test to determine whether a defendant understood he was being arrested - that is, we ask "whether a reasonable person in the defendant's circumstances would have so understood." Grant, 71 Mass. App. Ct. at 208.

The defendant argues that the Commonwealth presented insufficient evidence to show that he understood he was under arrest when he struck Waltham Police Officer Daniel Collins. Viewing the evidence in the light most favorable to the Commonwealth, see Commonwealth v. Latimore, 378 Mass. 671, 676-677 (1979), the jury could reasonably have found that Officer Collins and another officer were outside a Waltham apartment effecting an arrest of the defendant's brother while Waltham Police Officer Richard Anderson was inside the apartment with

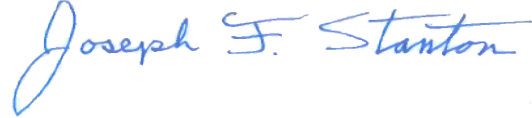
the defendant and another individual.¹ As Officer Anderson went outside to assist the other officers, the defendant exited the apartment behind Officer Anderson with one hand behind his back and the other in a fist, "as if he was going to come up and assault Officer Anderson." In response to the defendant's actions, Officer Collins drew his firearm, pointed it at the defendant, and told the defendant to stop and to get on the ground. The defendant did not adhere to these commands; instead, he ran away from Officer Collins and yelled at the officer not to shoot him. Officer Collins holstered his firearm and ran after the defendant, while "continually" telling the defendant to stop and that he was under arrest. Certainly at this point, a reasonable person would have known that he was under arrest. Compare Grant, 71 Mass. App. Ct. at 208 (officers failed to communicate intention to arrest defendant either prior to or during pursuit). Thereafter, the defendant punched Officer Collins. "The evidence was sufficient to allow [the jury to find] beyond a reasonable doubt that the defendant used physical force against [Officer Collins] to attempt to prevent

¹ Officers had responded to the apartment following a report of possible drug activity and were conducting a patfrisk of the occupants for safety reasons.

[him] from effecting the arrest."² Commonwealth v. Joyce, 84
Mass. App. Ct. 574, 581 (2013)

Judgment affirmed.

By the Court (Neyman, Sacks &
Wendlandt, JJ.³),



Clerk

Entered: June 17, 2019.

² We need not reach the defendant's argument that the Commonwealth cannot rely on the theory that he resisted the arrest of his brother, because the Commonwealth concedes it did not rely on, and the jury were not instructed on, such a theory.

³ The panelists are listed in order of seniority.